

## **Regulation of the City of Northampton Board of Health Restricting the Sale of Tobacco Products**

### **A. Statement of Purpose:**

It is the intention of the Northampton Board of Health to regulate the sale of tobacco products and nicotine delivery products, as there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, and irritations to the eyes, nose and throat (See Appendix A).

### **B. Authority:**

This regulation is promulgated pursuant to the authority granted to the City of Northampton Board of Health by Massachusetts General Laws Chapter 111, Section 31 and Chapter 270, Section 22(j) that Boards of Health may make reasonable health regulations.

### **C. Definitions:**

As used in this regulation, the following words shall have the following meanings, unless the context requires otherwise.

**Board:** The Board of Health of the City of Northampton

**Blunt Wrap:** Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

**Business Agent:** An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

**Characterizing flavor:** A distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including , but not limited to, tastes or aromas relating to any fruit, chocolate, mint, menthol, wintergreen, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

**Cigar:** Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law (MGL), Chapter 64C, Section 1, Paragraph 1.

**Cigarette Retailers License:** A license issued by the Massachusetts Department of Revenue for tobacco sales.

**Component Part:** Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

**Constituent:** Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

**Coupon:** Any card, paper, note, form, statement, ticket or other communication distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service or accommodation without charge or at a discount price.

**Distinguishable:** Perceivable by either the sense of smell or taste.

**Educational Institution:** Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

**Electronic Cigarette:** Any product that can deliver nicotine to the user through inhalation of vapor or aerosolization. Electronic cigarette devices include any component part of such product, including liquid for use in the device regardless of whether the liquid contains nicotine or whether the liquid is sold separately. This term includes such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name. It does not include any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product that is being marketed and sold or prescribed solely for the approved purpose.

**Employee:** An individual or person who performs a service for an employer at the employer's workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer's workplace for more than a *de minimus* amount of time.

**Employer:** Any individual, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private or non-profit which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the City of Northampton.

**Flavored Tobacco Product:** Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

**Flavored Tobacco Product Enhancer:** Any product designed, manufactured, produced, marketed or sold to produce a characterizing flavor when added to any tobacco product or vapor product as defined below.

**Health Care Institution:** An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides Pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices.

**Identification:** A driver's license, U.S. military ID, passport, or other government issued identification which displays a photograph and a date of birth of the bearer.

**Liquid Nicotine Container:** A bottle or other vessel which contains nicotine in liquid or gel form, whether or not combined with another substance or substances, for use in a tobacco product, as defined herein. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco product, as defined herein, if the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

**Listed or Non-Discounted Price:** The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or coupons.

**Minimum Legal Sales Age (MLSA):** The age an individual must be before that individual can be sold a tobacco product in the municipality.

**Non-Residential Roll-Your-Own (RYO) Machine:** A mechanical device made available for use in a commercial setting (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

**Permit Holder:** Any person engaged in the sale or distribution of tobacco products who applies for and receives a tobacco product sales permit or any person who is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, or his or her business agent.

**Person:** Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.

**Self-Service Display:** Any display from which customers may select a tobacco product or a nicotine delivery product without assistance from an employee or store personnel.

**Schools:** Public or private elementary or secondary schools.

**Smoke Constituent:** Any chemical or chemical compound in mainstream or side stream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

**Smoking Bar:** An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

**Tobacconist:** A permitted establishment that does not share space with another business, that does not sell food or alcohol, that does not have a retail food or food service establishment permit or lottery license, whose only purpose is to sell or offer for retail sale, tobacco products and/or tobacco product paraphernalia, and in which the entry of persons under the age of 21 is prohibited at all times. A tobacconist must maintain a valid permit for the retail sale of tobacco products from the Northampton Board of Health. Entrance to the establishment must be secure so that access to the establishment is restricted to employees and to those 21 years or older, and there must not be any door, window or other physical opening between a tobacconist and another business. The establishment shall not allow anyone under the age of 21 to work at the establishment. Each tobacconist must be its own business with its own corporate filings, tax submissions, state and local licenses and permits.

**Tobacco Paraphernalia:** Tobacco paraphernalia" means any object used, intended for use, or designed for use in inhaling or otherwise introducing tobacco products into the human body.

**Tobacco Product:** Any product containing, made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, "e-liquids" or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

**Vending Machine:** Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes, any other tobacco product or nicotine delivery product.

**D. Tobacco Product Sales:**

1. The minimum legal sales age in Northampton is 21. Tobacco products, as defined herein may not be sold to anyone under the age of 21.
2. Each person selling or distributing tobacco products, as defined herein shall verify the age of **EVERY** purchaser during **EACH** transaction by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. Verification is required for **ANY** person attempting to purchase tobacco products, as defined herein. All retail sales of tobacco products, as defined herein must be face-to-face between the seller and the buyer and occur at the permitted location.

**E. Sale of Favored Tobacco Products Restricted:**

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, as defined herein, or any flavored tobacco product enhancer as defined herein except in Tobacconist Establishments with a valid Tobacco Product Sales Permit from the Northampton Board of Health.

**F. Sale of Electronic Cigarette Products Restricted to Tobacconist Establishments:**

No person shall sell or distribute or cause to be sold or distributed any Electronic Cigarette Products, as defined herein, except in a permitted Tobacconist Establishment.

#### **G. Sale of All Tobacco Products Restricted:**

After June 30, 2020, no person shall sell or distribute or cause to be sold or distributed any tobacco product except as a Tobacconist with a valid Tobacconist Establishment Permit from the Northampton Board of Health.

#### **H. Signage and Educational Material:**

Items enumerated below are required to be posted conspicuously by the permit holder so that they may be readily seen by a person standing at or approaching the cash register. The signs shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

1. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, along with any other state required signage, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Northampton Board of Health.
2. The owner or other person in charge of a retail outlet or other place used to sell tobacco products at retail shall conspicuously post a sign stating that "The sale of nicotine delivery products to anyone under 21 years of age is prohibited."
3. The permit holder shall post at each point of sale a universal carding sign that states "We Check Identification of All Purchasers of Tobacco and Nicotine Delivery Products," which will be provided by the Northampton Board of Health.
4. Referral information about smoking cessation will be provided by the Northampton Board of Health and shall be on display at the point of sale.

#### **I. Tobacco Product Sales Permit:**

1. No person shall sell or otherwise distribute tobacco products, as defined herein at retail establishments within the City of Northampton without first obtaining a Tobacco Product Sales Permit issued annually by the Northampton Board of Health. Only owners of establishments with a permanent, non-mobile location in Northampton are eligible to apply for a permit and sell tobacco products, as defined herein at the specified location in Northampton. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Northampton Board of Health regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales, as defined herein regarding federal, state and local laws regarding the sale of tobacco products, as defined herein and this regulation. Each applicant who sells tobacco products, as defined herein is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a Tobacco and Nicotine Delivery Product Sales Permit can be issued.
2. The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be determined by the Northampton Board of Health.
3. A separate permit is required for each retail establishment selling tobacco products as defined herein.
4. Each Tobacco Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.
5. No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco products, as defined herein until such employee reads this regulation and federal and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state and federal laws.
6. A Tobacco and Nicotine Delivery Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
7. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
8. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or has not satisfied any outstanding permit suspensions.
9. Maximum Number of Tobacco Product Sales Permits.

- a. Until July 1, 2020, there shall not be more than 29 Tobacco Product Sales Permits or Tobacconist Establishment Permits issued in Northampton. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew their permit within 30 days of expiration will be treated as a first-time permit applicant. Applicants who purchase a business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein.
- b. As of July 1, 2020, all Tobacco Products Sale Permits will expire, and the only permits permitted by the Northampton Board of Health will be Tobacconist Establishment Permits.
- c. After January 1, 2020 there shall be no more than 27 Tobacconist Establishment Permits issued in Northampton.
- d. Any new Tobacconist Establishment permits shall not be issued to any new applicant for a retail location within five hundred (500) feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises.

**J. Tobacconist Establishment Permit Holder:**

1. No person shall operate a Tobacconist Establishment within the City of Northampton without first obtaining a Tobacconist Establishment Permit issued by the Northampton Board of Health.
2. Tobacconist Establishment Permits expire on December 31<sup>st</sup> annually.
3. The Tobacconist Establishment Permit required hereunder shall be a separate permit in addition to the Tobacco Product Sales Permit required, pursuant to Section G, above.
4. The Tobacconist Establishment Permit shall be displayed at the Tobacconist Establishment in a conspicuous place.
5. A Tobacconist Establishment Permit is non-transferable.

**K. Cigar Sales Regulated:**

1. No person shall sell or distribute or cause to be sold or distributed a single cigar unless such cigar is priced for retail sale at two dollars and fifty cents (\$2.50) or more.
2. No person shall sell or distribute or cause to be sold or distributed any original package of two or more cigars, unless such package is priced for retail sale at five dollars (\$5.00) or more.
3. This section shall not apply to a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Northampton; or to a Tobacconist establishment.
4. The Northampton Board of Health may adjust from time to time the amounts specified in the Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

**L. Prohibition of the Sale of Blunt Wraps:**

No person or entity shall sell or distribute blunt wraps in Northampton.

**M. Free Distribution and Coupon Redemption:**

No person shall distribute, or cause to be distributed, any free samples of tobacco products, as defined herein. No means, instruments or devices that allow for the redemption of any tobacco products, as defined herein for free or cigarettes at a price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permit holder. No person shall sell a tobacco product, as defined herein, to consumers through any multi-pack (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.

**N. Out-of-Package Sales:**

1. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.
2. Permit holders who sell Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, and must provide the Northampton Board of Health with a written plan for disposal of said product, including disposal plans for breakage, spillage or expiration of the product.
3. All permit holders must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S.C. §§1471 through 1476 and 16 CFR §1700 et. seq.
4. No permit holder shall refill a cartridge that is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

**O. Self-Service Displays:**

All self-service displays of tobacco products, as defined herein are prohibited. All humidor, including, but not limited to, walk-in humidor must be locked when not in use.

**P. Vending Machines:**

All vending machines containing tobacco products, as defined herein are prohibited.

**Q. Non-Residential Roll-Your-Own Machines:**

All Non-Residential Roll-Your-Own machines are prohibited.

**R. Prohibition of the Sale of Tobacco Products by Health Care Institutions:**

No health care institution located in the City of Northampton shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care institution within it, including but not limited to, a pharmacy or drug store, shall sell or cause to be sold tobacco products, as defined herein.

**S. Prohibition of the Sale of Tobacco Products by Educational Institutions:**

No educational institution located in the City of Northampton shall sell or cause to be sold tobacco products, as defined herein. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

**T. Violations:**

It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation. The violation of this regulation will result in the permit holder incurring the penalties outlined below:

1. First Violation – a fine of three hundred dollars (\$300.00).
2. Second Violation – a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit and the Tobacconist Establishment Permit if applicable shall be suspended for seven (7) consecutive business days.
3. Third violation – a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit and the Tobacconist Establishment Permit, if applicable shall be suspended for thirty (30) consecutive business days.
4. Four or more violations – The Board shall permanently revoke the Tobacco Product Sales Permit and the Tobacconist Establishment Permit, if applicable.

In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products, as defined herein directly to a consumer while his or her permit is suspended shall constitute a separate violation of this regulation and may be subject to revocation of the Tobacco Product Sales Permit and the Tobacconist Establishment Permit, if applicable.

**U. Non-Criminal Disposition:**

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D. Each day any violation exists shall be deemed to be a separate offense.

**V. Enforcement:**

Enforcement of this regulation shall be by the Northampton Board of Health or its designated agent(s).

Any resident who desires to register a complaint pursuant to this regulation may do so by contacting the Northampton Board of Health or its designated agent(s) and the Board of Health may investigate.

1. The Board of Health shall provide notice of the intent to suspend, revoke, or deny a "Tobacco Product Sales Permit and a Tobacconist Establishment Permit, if applicable.
2. The notice shall contain the reasons for the proposed permit suspension and establish a time and date for a hearing.
3. The date of the hearing shall be no earlier than seven (7) days after the date of said notice.
4. The permit holder shall have an opportunity to be heard at such hearing.
5. The permit holder shall be notified of the Board of Health's decision and the reasons therefore, in writing, within ten (10) days of the hearing.
6. Failure to appear in person at the hearing, without prior notice and just cause to the Board of Health shall act as a waiver of the right to a hearing and the fine, revocation, denial, or suspension shall, if applicable, become effective on the date included in the notice.
7. The Northampton Board of Health, after a hearing, shall suspend the applicable permit if the Board of Health finds that a violation of this regulation occurred. All tobacco and nicotine delivery products shall be removed from the retail establishment upon suspension of the Tobacco Product Sales Permit and the Tobacconist Establishment Permit, if applicable.
8. Any permit holder who does not pay the assessed fine within twenty-one days after written notice of the Board of Health's decision upholding the fine may result in further enforcement.

**W. Severability:**

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

**X. Effective Date:**

This regulation shall take effect on 2019

**Signatures:**

Name	Signature	Date
Joanne Levin, MD - Chair		
Suzanne Smith, MD, MPH		
Laurent Levy, PhD		
Cynthia Suopis, PhD		
William Hargraves		

A public hearing was held on:

DRAFT